

COMMISSIONER MEETINGS
All meetings take place in the Commissioners Conference Room (3107)
located in the Stillwater Building @ 316 North 26th Street (3rd Floor)
and are open to the public unless otherwise noted

MONDAY - June 15, 2020

MEETING UPDATE

In response to recent public health concerns surrounding COVID-19, Board of County Commissioner meetings will be held in a different format. Meetings may include virtual video conferencing to comply with social distancing guidelines.

In an effort to honor your right to participate and allow for public comment we have set up a conference call line. **Please dial (866) 876-1424, follow the prompts, and use access code 6002703#.**

The public may comment during the specific public comment periods listed on the agenda. Please have your phone set to "mute" until the public comment period is open.

If you have questions please contact the B.O.C.C. office at (406) 256-2701 or the Clerk and Recorder at (406) 256-2787.

8:30 Department Meetings

1. Department Head Meeting - MetraPark
2. Human Resources
3. Facilities
4. Finance
5. Legal/Litigation
 - a. Closed: New Litigation

2:00 COMMISSIONERS DISCUSSION

DEPARTMENTS

1. C/C Planning - Homestead Acres Subdivision - Preliminary Major Plat

COMMISSIONERS

1. Commissioner Ostlund -
 - a. Landfill Use Agreement with the City of Billings
 - b. Contract with Billings Public Schools for the GED Program at the Detention Facility
2. Commissioner Boards Report

PUBLIC COMMENTS ON COUNTY BUSINESS

TUESDAY – June 16, 2020

9:00 Agenda Setting

9:30 COMMISSIONERS BOARD MEETING

B.O.C.C Monday Discussion

5. a.

Meeting Date: 06/15/2020

Title: Closed/Litigation

Submitted By: Erica Wiley

TOPIC:

Closed: New Litigation

BACKGROUND:

n/a

RECOMMENDED ACTION:

Discuss

B.O.C.C Monday Discussion

1.

Meeting Date: 06/15/2020

Title: Homestead Acres Subdivision - Preliminary Major Plat

Submitted For: Monica Plecker

Submitted By: Dave Green

TOPIC:

C/C Planning - Homestead Acres Subdivision - Preliminary Major Plat

BACKGROUND:

On March 2, 2020, the Planning Division received an application for major preliminary plat approval for the proposed Homestead Subdivision. The property is generally located approximately 1,500 feet south of the intersection of South 80th Street West and King Avenue West. This subdivision would create 16 lots from a 71.75-acre parcel of land. The applicant is proposing to develop a residential subdivision. The land is outside of zoning and is currently farmland.

The applicant requested a 30-day delay for the City-County Planning Division to develop a way to have public meetings electronically. Thus meeting requirements of separation because of the COVID-19 virus. The Planning Board conducted a public hearing and forwarded recommendation to the Board of County Commissioners on the preliminary plat.

RECOMMENDED ACTION:

The Yellowstone County Planning Board is forwarding a recommendation to the Board of County Commissioners to conditionally approve the preliminary plat of Homestead Subdivision, deny the variance request, and adopt the Findings of Fact as presented in the staff report.

Following the Planning Board Plat Review meeting the applicant and County Staff had a meeting regarding the subdivision. The applicant and his agent said they had additional information to provide to show the land to the south was not desirable land for development. This information is attached as Additional Information.

After the Planning Board meeting and a recommendation of denial of the variance request Yellowstone County Attorney Mark English received a letter from Hendrickson Law Firm P.C., Attorneys at Law, representing Levi Britton. The letter is attached as Letter from Hendrickson Law Firm P.C.

VARIANCES REQUESTED

A variance is being requested for this subdivision. The applicant has requested a variance from Yellowstone County Subdivision Regulations Section 4.6.B.1 Relation to Undeveloped Areas.

When a proposed subdivision adjoins undeveloped land, streets within the proposed subdivision shall be arranged to allow access to the adjoining undeveloped land.

Staff is recommending denial of the variance request.

Further explanation and analysis can be found in Attachment A.

PROPOSED CONDITIONS OF APPROVAL

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact.

1. To protect public health and safety, and provide a safe irrigation water delivery system, prior to final plat approval the applicant will add language in the SIA under the heading VIII Irrigation defining how the irrigation water will be made available to each lot east of the High Ditch.
2. To ensure public health and safety, prior to final plat approval the applicant will receive DEQ approval for the proposed storm water management system and for the proposed water and septic systems for each lot.
3. To protect public health and safety and provide for future Dry hydrant maintenance, prior to final plat approval the applicant will expand the existing RSID for the dry hydrant system in Shop World subdivision for the 14 lots on the east side of High Ditch. They will also expand the Tanglewood RSID for their fire suppression system for the two new lots with frontage on South 84th Street West.
4. To minimize the effects on local service, prior to final plat approval the applicant will coordinate with the USPS for locating and providing the correct amount of space for safely

delivering the mail to the residents.

5. To minimize effects on the natural environment, prior to final plat approval a weed management plan and property inspection shall be completed by the County Weed Department.

6. Minor changes may be made in the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

7. The final plat shall comply with all requirements of the County Subdivision Regulations, rules, regulations, policies, and resolutions of the Yellowstone County, including laws regarding moving houses onto or off the property, and the laws and Administrative Rules of the State of Montana.

Attachments

Proposed Plat

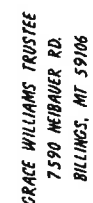
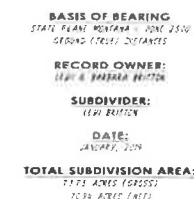
Findings of Fact

Attachment A, Variance

Letter from Hendrickson Law Firm P.C.

Additional Information

(TRACT 3 OF COS 3676, LOCATED IN THE NE1/4 OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 24 EAST, P.M.M., YELLOWSTONE COUNTY, MONTANA)



SHEET 1 OF 1
HOMESTEAD ACRES
(A SUBDIVISION OF YELLOWSTONE COUNTY)

FINDINGS OF FACT

The City-County Planning Division Staff has prepared the Findings of Fact for Homestead Subdivision. These findings are based on the preliminary plat application and supplemental documents addressing the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Yellowstone County Subdivision Regulations (YCSR).

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health and safety (76-3-608 (3) (a) MCA) (Section 3.2 (H) (2) YCSR)

1. Effect on agriculture and agricultural water users' facilities

The subject property is used for agricultural purposes. There are agricultural water users' facilities near the subject property. On the west side of the property, there is the High Ditch. The applicant is showing a 75-foot wide easement over the ditch. In the SIA under the heading Irrigation, it states there will be a water share from the High Ditch will be used to supply irrigation water to the lots east of the ditch. Each lot will be responsible for a pump to obtain the water for spray irrigation, no flood irrigation will be allowed. A Homestead irrigation district will be created to maintain the irrigation system for the subdivision. In the SIA under the heading, VIII Irrigation the applicant will define how the water from the High Ditch will be carried to each lot for individual use. **(Condition #1)** There will be impacts from this subdivision on agriculture use; it will be taking 71.75 acres of ag land out of production.

2. Effect on local services

a. **Water and Septic** –There are not any water or sewer district in the area of this proposed subdivision. The applicant is proposing to use a 1,500-gallon cistern on each lot. The SIA states that the water systems will be in accordance with Section 4.9 of the Yellowstone County Subdivision Regulations. They will also receive an approval letter from the MDEQ to be submitted with the final plat. **(Condition #2)**

The applicant is proposing to have a septic system on each lot. The SIA states that the septic systems will be in accordance with Section 4.8 of the Yellowstone County Subdivision Regulations. They will also receive an approval letter from the MDEQ to be submitted with the final plat. **(Condition #2)**

b. **Streets and roads** – There will be new roads within the proposed subdivision. One is a connection to an existing road from the subdivision to the north, Fire Tank Street. The main road into the subdivision makes a connection to South 80th Street West, Wisner Avenue. The roads within the subdivision are private roads and will be maintained by the residents through an HOA. The subdivision to the north also has private roads. All the lots, with the exception of Lots 8 and 9, will have access off Wisner Avenue. Lots 8 and 9 will have access off South 84th Street West.

County Public works has requested a one (1) foot no access strip be placed along the lots with frontage on South 80th Street West, this is shown on the proposed plat.

The applicant has asked for a variance from the requirement to provide a future connection to property to the south that is currently undeveloped. **Section 4.6.B.1 Relation to Undeveloped Areas.** *When a proposed subdivision adjoins undeveloped land, streets within the proposed subdivision shall be arranged to allow access to the adjoining undeveloped land. Street right-of-way within the proposed subdivision shall be provided to the boundary lines of the tract to be developed, unless prevented by topography, other physical conditions, or adjoining land cannot be further subdivided or developed.*

Staff is recommending denial of the requested variance.
See Attachment A for further explanation and analysis.

c. **Fire and Police services** – The property is within the Laurel Urban Service Area (LUFSA). The developer will be using a 30,000-gallon dry hydrant system that was installed by the subdivision to the north. The dry hydrant is on the north boundary of the proposed subdivision on Fire Tank Street. This subdivision will be added to the RSID for the existing dry hydrant system. **(Condition #3)** Lots 8 and 9 will be part of the existing fire district with Tanglewood Estates Subdivision. Lots 8 and 9 will become part of the maintenance district for the fire suppression of Tanglewood Estates Subdivision. **(Condition #3)**

The Yellowstone County Sheriff's Department state they will provide law enforcement services to this subdivision.

d. **Solid Waste disposal** – The Billings Landfill has capacity for solid waste disposal. Solid waste will be collected and disposed of by a private garbage collection company. Each lot owner will be responsible for arranging for collection.

e. **Storm water drainage** – Storm water drainage shall satisfy Yellowstone County Storm Water Management requirements and DEQ. A storm water plan will have to be reviewed and approved by the DEQ to ensure the proposed stormwater management is feasible and will work satisfactorily. **(Condition #2)**

f. **School facilities** – The proposed subdivision is located within Elder Grove School District for K-8 and in School District #2 for High School. Elder Grove School is in the process of constructing a new building to accommodate the growth in the area. West High School in School District #2 will provide educational services 9th through 12th grade.

g. **Parks and recreation** – This proposed subdivision is required to provide parkland. The applicant in the SIA under the heading VIII. Parks/Open Space has outlined the requirements of parkland. The total required parkland dedication is 1.56 acres because of the large lot sizes. The applicant is proposing to do a cash in lieu contribution for the parkland dedication. The applicant will follow the requirements of Section 10.6 YCSR. The estimated contribution will be submitted to the County Park Board for review and

approval. This requirement is outlined in the SIA under the same heading as mentioned earlier in this paragraph.

h. **Postal Service** – The applicant will be required to coordinate the location of the delivery box and provide enough space for the delivery vehicle to pull out of traffic for safety. **(Condition #4)**

i. **Historic features** – No known historic or cultural assets exist on the site.

3. Effects on the natural environment

The development will use noxious weed control measures to prevent the spread of noxious weeds to adjacent developed or agricultural land. Prior to final plat approval, the applicant will apply for and obtain a weed management plan with the County Weed Department. That plan will be submitted with final plat approval. **(Condition #5)**

There are no apparent or known natural hazards on the property.

4. Effects on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. A paragraph in the ‘Conditions that Run with the Land’ section of the SIA warns future lot owners of the likely presence of wildlife in the area and their potential to damage residential landscaping.

5. Effects on public health and safety

Plans and designs for the water and septic system will be reviewed and approved by MDEQ prior to final plat approval to ensure public health and safety.

Fire and emergency services are provided for this proposed subdivision from LUFSA and the Yellowstone County Sheriff’s department.

B. Was an environmental assessment required? If yes, what, if any, significant adverse impacts were identified? (76-3-603 MCA) (Chapter 9, YCSR)

An environmental assessment (EA) was required for this subdivision. The EA submitted the many topics required by the Subdivision regulations for an EA. Of those covered, the topics of main concern are effects on wildlife, existing vegetation and surface water. Because this property is farmland, the wildlife and existing vegetation have long ago been eliminated from the property. Any animals or vegetation that remains on the property is along the banks of the High Ditch.

C. Does the subdivision conform to the Yellowstone County 2008 Growth Policy, the 2018 Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan Update? [BMCC 23-302.H.4.]

1. Yellowstone County - 2008 Growth Policy

The subdivision is consistent with the following goals of the Growth Policy:

- Goal: Predictable land use decisions that are consistent with neighborhood character and land use patterns. (p. 6)

The subdivision is consistent with the type of residential development to the west in the area.

- Goal: New developments that are sensitive and compatible with the character of adjacent County town sites. (p. 6)

There is residential development directly adjacent to the subject property.

- Goal: Controlled weed populations. (p. 9)

The developer shall complete a weed management plan, and shall provide a re-vegetation plan for any ground disturbed by development.

2. 2018 Urban Area Transportation Plan

The subject property maintains the road the study area of the Transportation Plan. As proposed, there are only neighborhood streets associated with this subdivision.

3. Billings Area Bikeway and Trail Master Plan Update (BATMP)

The subject property is outside of the study area of the BATMP.

D. Does the subdivision conform to the Montana Subdivision and Platting Act (MSPA) and to local subdivision regulations? [MCA 76-3-608 (3) (b) and Section 3.2 (3) (a) YCSR]

The proposed subdivision meets the requirements of the MSPA and the YCSR. The subdivider and the local government have complied with the subdivision review and approval procedures that are set forth by local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? [Section 4.8 (C) and 4.9 (C), YCSR]

The subdivider must receive approval from the MDEQ prior to final approval. New parcels are subject to DEQ review.

F. Does the proposed subdivision meet any applicable Zoning Requirements? [Section 3.2 (H) (3) (e), YCSR]

The proposed subdivision is outside zoning.

G. Does the subdivision provide for necessary planned utilities? [MCA 76-3-608 (3) (c) and Section 3.2 (H) (3) (b), YCSR]

Private utilities are to be installed in the public road right-of-way by Yellowstone Valley Electric Cooperative and MDU. Should the private utility companies require easements the applicant will be required to coordinate the easements needed with the private utility companies. There are utility easements shown on the face of the plat for private utilities.

**H. Does the proposed subdivision provide for Legal and Physical Access to all lots?
[MCA 76-3-608 (3) (d) and Section 3.2 (H) (3) (c) (d), YCSR]**

Legal and physical access will be provided for the new proposed lots from South 80th Street West onto Wisner Avenue that will provide access for all lots but two. Lots 8 and 9 will have access off South 84th Street West.

CONCLUSIONS OF FINDINGS OF FACT

- This subdivision does not create adverse impacts that warrant denial of the subdivision.
- Impacts to agriculture, agriculture water user facilities, local services, public health and safety, the natural environment, and wildlife should be minimal, and can be mitigated by reasonable conditions of final plat approval.
- The subdivision conforms to some of the goals of the Growth Policy.
- The applicant has complied with the MSPA and YCSR processes and the subdivision conforms to the law requirements.

RECOMMENDATION

Staff recommends conditional approval of the preliminary plat of Homestead Subdivision, to the Planning Board, deny the variance request and adopt the Findings of Fact as presented in the staff report, the SIA and Waiver.

Attachment A

Staff Analysis and Recommendation

County Planning, County Public Works, County Legal staff have reviewed the request for a variance from **Section 4.6.B.1 Relation to Undeveloped Areas**. When a proposed subdivision adjoins undeveloped land, streets within the proposed subdivision shall be arranged to allow access to the adjoining undeveloped land. Street right-of-way within the proposed subdivision shall be provided to the boundary lines of the tract to be developed, unless prevented by topography, other physical conditions, or adjoining land cannot be further subdivided or developed.

The applicant has requested this variance, see Request Letter included below this analysis, because they feel the existing irrigation ditch on the property to the south is a hindrance to future development to the south. They also feel the properties to the south have many opportunities for multiple connections to existing roads around them.

Below are the comments from County Public Works and County Legal.

Although we agree that the ditch does run somewhat east and west, it also runs a fair bit north and south. We are unable to determine exactly what the hardship is that they are requesting relief from. The ditch appears to be on the other property and they are not being asked to cross-said ditch. It appears that the proposed connection to the south could be situated in an area that the ditch would not be an issue; therefore, we feel that we cannot support this variance.

After reviewing the proposed subdivision, we do not think a variance is justified. The ditch only runs parallel to the property line for a short distance. There seems to be ample space to provide an access to a large amount of the adjoining undeveloped land along the southern border without having to deal with the ditch.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties; There are two different properties to the south of this proposed subdivision. One 20-acre parcel and the other one that is 133 acres. The large parcel does have multiple street frontages around the outer edge of the land. The 20-acre parcel has frontage only on South 80th Street West. The granting of the variance would not be detrimental to public health, safety and general welfare at this time. Should either property to the south develop it may hinder the ability to develop without a connection to the north. The subdivision regulations require connections to undeveloped land to ensure neighborhood connections and not the creation of residential islands. The regulation is looking to the future of possibilities not the immediate condition.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced; There are no particular physical surroundings, shape or topographical condition of the land that would prevent the applicant from providing a future connection to the

south. The ditch mentioned in the applicants request is on the property to the south and would not hinder this applicant from providing a connection for the future.

3. The variance will not result in an increase in taxpayer burden; The variance request will not increase taxpayers burden.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy; The subdivision is outside of zoning and will not cause a nonconformance with zoning. The 2008 Yellowstone County Growth Policy does not directly address this specific issue.

5. The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied. The variance application provided by the agent suggest the alternative is that there are many frontages on the 133 acre parcel that they are able to have more than one way in and out should they develop. They also suggest that the same is true for the 20-acre parcel. While this is true at this time there is no way of knowing how the properties to the south may develop or if they will develop as two large developments or if they will be broken into smaller pieces and sold to multiple developers. The subdivision regulations require connections to undeveloped land to ensure neighborhood connections and not the creation of residential islands. The regulation is looking to the future of possibilities not the immediate condition.

Therefore, staff is recommending denial of the proposed variance, and recommends that the Planning Board recommend denial to the Board of County Commissioners.

Variance Request #1 – Street Right-of-Way

Section 4.6.B.1 Relation to Undeveloped Areas: When a proposed subdivision adjoins undeveloped land, streets within the proposed subdivision shall be arranged to allow access to the adjoining undeveloped land. Street right-of-way within the proposed subdivision shall be provided to the boundary lines of the tract to be developed, unless prevented by topography or other physical conditions.

A variance is being pursued to relieve the applicant from the requirement to provide street right-of-way within the proposed subdivision, to the boundary lines of the tract to be developed. There is an existing irrigation ditch located on the parcel immediately south of the subject property. This ditch runs east to west and is a physical condition that would hinder future adjoining right-of-way onto the subject property. It is also worth noting that the 133-acre parcel to the south of the subject property already has opportunities for access off S. 80th St. West, Hesper Road, and S. 84th St. West. The 20-acre parcel immediately to the south of the subject property also already has existing access off S. 80th Street West. Due to the existing east to west irrigation ditch and the multiple alternative access opportunities on the properties located south of the subject property, a variance is being pursued to relieve the applicant from providing street right-of-way to the southern boundary line of the tract to be developed.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;

The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties. Homestead Acres Subdivision proposes one new access point onto S. 80th Street West, and to extend the private access easement to the existing road at the northern boundary of the tract to be developed. This will provide a safe access onto the subdivision roadways to the north for fourteen of the proposed lots on the east side of the irrigation ditch. The two proposed lots on the west side of the irrigation ditch are proposed to have individual access off S. 84th Street West. This will also provide safe access onto the surrounding roadways. The variance will not be injurious to other adjoining properties as they have several alternative access opportunities as noted above.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced;

Undue hardship to the owner would result if the strict letter of the regulation was enforced as there is an existing irrigation ditch running east to west on the property located immediately south of the subject property. This is a physical and topographical condition unique to this property. This ditch would hinder a future adjoining right-of-way onto the subject property.

3. The variance will not result in an increase in taxpayer burden;

An increase in taxpayer burden will not result from approving this variance. The subdivider proposes to construct the proposed roadways within Homestead Acres. If the properties located

to the south are developed at a future time, there are existing alternative access opportunities on the existing surrounding roadways.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy; and

Approving this variance will not place the subdivision in nonconformance with the growth policy. The property is unzoned so approving the variance will not place the subdivision in nonconformance with any adopted zoning regulations.

5. The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.

The alternative design proposed for Homestead Acres is equally effective as it is proposed to connect with existing roadways to the north, east and west. The lots to the south already have opportunities to connect to the south, east and west. The existing irrigation ditch located on these properties hinders a future adjoining right-of-way onto the subject property.

HENDRICKSON LAW FIRM, P.C.

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AREA CODE 406

June 4, 2020

Mark A. English
217 N. 27th Street, Rm. 207
P.O. Box 35025
Billings, Montana 50107-5025
menglish@co.yellowstone.mt.gov

Re: Homestead Acres Subdivision

Dear Mark:

We represent Levi and Barbara Britton, developers of the Homestead Acres Subdivision, which was the subject of a Planning Board Public Hearing on May 27, 2020. We request that you advise the Planning Board that there is no authority for the requirement that a road be constructed, as opposed to simply providing a right-of-way, to the adjacent undeveloped tracts.

There was a pre-approval meeting with the developer prior to the May 27, 2020 hearing, during which my client advises there was no mention of any requirement that a finished road be constructed. The regulations provide for a "Street right-of-way within the proposed subdivision ...to the boundary lines of the tract to be developed." Section 4.6.B.1., of the Yellowstone County Subdivision Regulations (regulations). It has an exception for "topography, or other physical conditions, or adjoining land cannot be subdivided or developed." Because my client understood the staff believes the exception for topography, physical conditions, or adjoining land, does not apply, my client did request a variance from the right-of-way requirement. At the meeting, the Board voted to deny that request.

At that public hearing, Monica Plecker incorrectly stated that the regulations allow the county to require a constructed road:

"Sure, so, at the plat review, the Planning Board did suggest that the staff as well as the applicant and an agent meet and kind of clarify a few things as there was an item of confusion as to whether or not, if the variance were denied and connection had to be made, if that would have to be constructed. The applicant, its agent and county legal, county public works, and Dave and myself all met and

discussed with the applicant that, you know, we felt it was very clear that the intent of the regulations is not only to provide the connection legally, through either right of way or easement, but to also construct it. So, I just wanted to clarify that we did have that conversation. That is where staff collectively stands on the issue.”

Excerpt from the video recording of the Zoom Planning Board meeting on May 27, 2020.

I can find no authority to support what Ms. Plecker says is the clear intent of the regulations. Section 4.6.B.1 of the regulations does not mention the construction of a road. In the language quoted in the second paragraph of this letter, it only states that a street right-of-way shall be provided to the adjacent tract.

As you know, the plain meaning of the regulation is controlling unless there is an ambiguity. The term “right-of-way” is not ambiguous. It means an easement for a road, but does not mean the road itself. The two terms are used throughout the code as distinguishable, a right of way being an easement for use, and a road construction meaning to build a road in compliance with county specifications. I am aware of no provision in the regulations, or elsewhere, where “right-of-way” is intended to mean a constructed road.

The only authority I can find in the regulations for the requirement of road construction is in Section 4.6.C.13. It provides that roads within the subdivision shall be “paved if they connect to an existing paved road...” That provision does not apply here, as the connection road does not connect to an existing paved road.

I understand you have referenced Section 5.1, which provides that the subdivider shall have installed all of the required improvements or enter into a subdivision improvements agreement. But that section does not apply to improvements that are not authorized. It expressly pertains to improvements “as stipulated in these Regulations (76-3-507(1), MCA.” That section of the Montana code says the subdivider is to complete required improvements within the subdivision (or provide security). It does not and cannot allow local governments to require improvements that are not authorized by its regulations.


It may be within the county’s authority to adopt a regulation to require construction of a road connecting to undeveloped tracts, whether or not it is wise to do so, but such an amendment must be done in accordance with the statute, including the public hearing on proposed regulations. *See* §§76-3-501, and 76-3-501, MCA. That has not been done before this plat was submitted. And the regulations that were in place when my client submitted the plat for review with sufficient information for that review are the ones that apply, whether the regulations are subsequently changed or not. §76-5-609(5), MCA.

If the county were to unlawfully make such a requirement as enunciated by Ms. Plecker, namely, a requirement that my client construct the road, my client estimates it would cost at least

\$150,000.00 to comply. My client would have little choice but to challenge such a decision by filing an court action. We hope that is not necessary. We would appreciate your providing us with confirmation that the county will not require the road construction. If you do not agree, please identify any authority you may have that supports a contrary position. I would appreciate a response within a week. Feel free to contact me if you wish to discuss this in the meantime.

Sincerely,

HENDRICKSON LAW FIRM, P.C.

By: 
Mark E. Noennig

MEN:cg
cc: Client

Dave,

Per your request, I have provided this email outlining the groundwater information provided regarding the property to the south. As it was noted in our previous meeting, the 134 acres to the south have significant groundwater issues as demonstrated by the abundance of Russian Olives on the site as well as the two attached documents.

That said, I could not go as far as to say the property is undevelopable due to groundwater as there are areas within the acreage that have sufficient separation between ground surface and groundwater but to this date the groundwater has been a deterrent to developers that have evaluated the site.

Attached you will find two exhibits showing groundwater evaluations done at the site. The first was completed by KLJ Engineering for the property owners and the different colored dots show groundwater levels in that particular area. As noted, this exhibit was completed in November so this may not be peak groundwater depth but it does provide some useful information regarding developable areas. I would assume that areas that are Red, Orange, or Black could likely be developed without issue. Purple areas would require additional monitoring. The remaining colors likely could not be developed with drainfields do to the 4-foot separation requirement DEQ has from the bottom of your system to groundwater.

The second exhibit is a groundwater study Territorial-Landworks completed for the property owners. This exhibit is far less extensive than what was completed by KLJ as we were only digging in areas we thought could likely support a drainfield area as we were trying to find as many buildable sites as possible. This exhibit shows 18 locations throughout the site that were evaluated.

Please let me know what additional information is required.

Kolten L Knatterud, PE
Project Executive



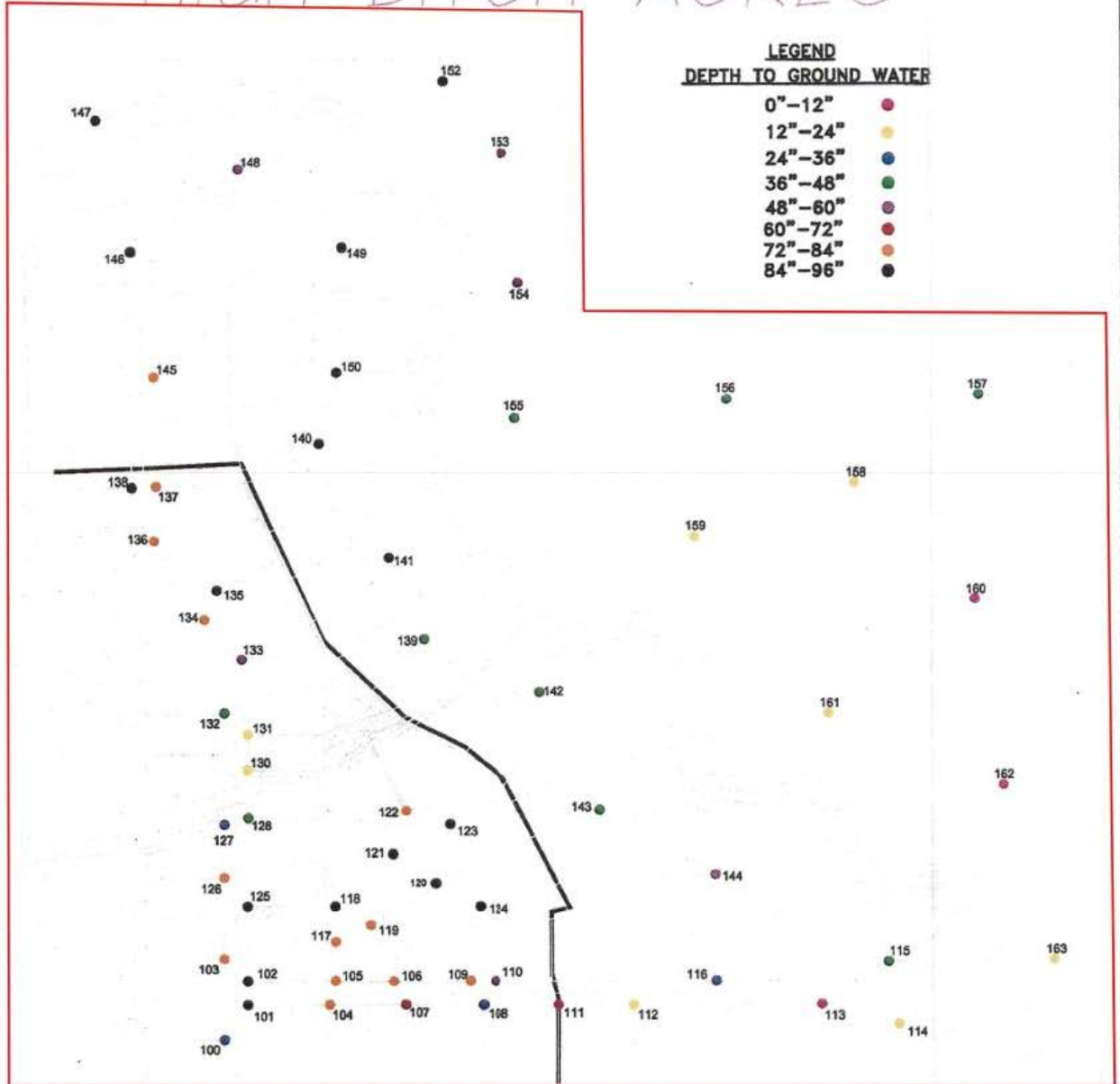
Territorial-Landworks, Inc. | now IMEG
175 N 27th Street | Suite 1312 | Billings, MT 59101

(406) 248-9000 | phone
(406) 544-1285 | mobile
(406) 721-5224 | fax

kolten.l.knatterud@imegcorp.com **(Please note my new email address)**

WELL MONITORING RESULTS FOR

HIGH DITCH ACRES



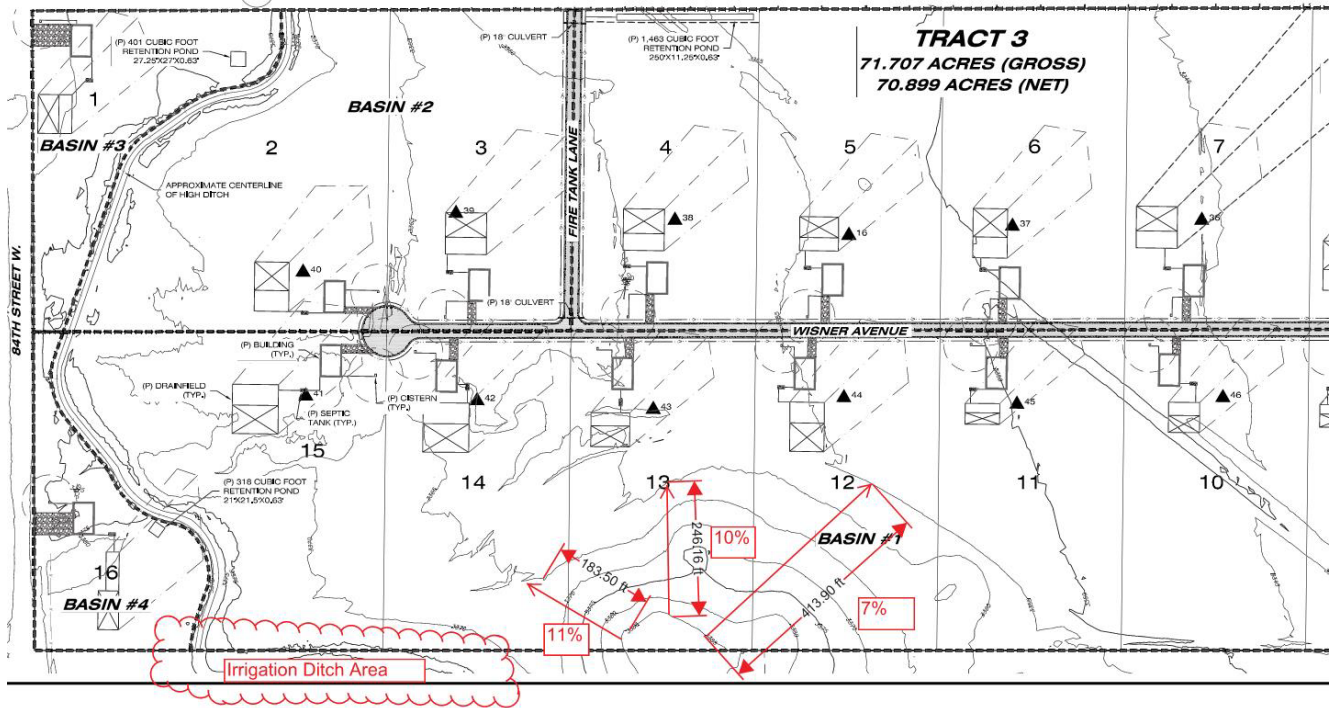
SCALE: 1"=400'

DATE: 11/15/05

Kadmas
a K&J Solutions company
Lee & Jackson
Engineers, Surveyors
and Planners



1. 6" TOP, 8' CONSISTENT, WATER AT BOTTOM, MINIMUM ROCKS, LIGHT BROWN CLAY LOAM
2. 7' CONSISTENT, WATER @ 7' / SHALE, MINIM. " " " SILTY CLAY LOAM
3. 6" TOP, 2' DEY / LIGHT GRAY, REMAINING DARK BROWN, MINIMAL ROCKS, WATER @ 7.5' SILTY CLAY LOAM
4. SAME AS # 1
5. SAME AS # 1
6. SAME AS # 1
7. 6" TOP, SAME AS 3 BUT CLAY LOAM INSTEAD. WATER @ 7'
8. SAME AS # 1 BUT SILTY CLAY LOAM
9. 6" TOP, 2' GRAY, NARROW SHALE, CLAY LOAM TO BOTTOM
10. SAME AS 1
11. 6" TOP, SILTY CLAY LOAM, SOME ROCKS, ~~APPROXIMATELY~~ GRAY BROWN
12. WATER SPOTS, WATER STANDING @ 5.5', CLAY LOAM
13. 6" TOP, 6' ^{S.H.} CLAY LOAM, LAYER OF WET SOLID,
14. WATER @ 5', 6" TOP, CLAY LOAM
15. WATER @ 7', CLAY LOAM
16. SAME AS 14, 17. SAME AS 1, 18. SILTY CLAY LOAM, water @ 8'



Slope Evaluation

Below was added by planning:

Section 4.6 C.14 Street Grades: All street grades shall conform to the requirements of the County. Street grades shall not exceed the following, with due allowance for reasonable vertical curves and intersection treatment.

Street Type	Percent Grade
Arterial	4
Collector	7
Local Access	12

B.O.C.C Monday Discussion

1. a.

Meeting Date: 06/15/2020

Title: Landfill Use Agreement with the City of Billings

Submitted By: Teri Reitz, Board Clerk

TOPIC:

Landfill Use Agreement with the City of Billings

BACKGROUND:

Attached is last years agreement and the new agreement for 2020.

Last years agreement payment was \$217,650.00.

This years agreement payment is \$258,000.00.

RECOMMENDED ACTION:

Discuss.

Attachments

2019 Landfill Use Agreement

2020 Landfill Use Agreement



LANDFILL USE AGREEMENT

THIS AGREEMENT made and entered into this ____ day of July 2 2019, by and between the CITY OF BILLINGS, MONTANA, a municipal corporation, hereinafter referred to as "CITY" and the YELLOWSTONE COUNTY SOLID WASTE DISPOSAL DISTRICT, hereinafter referred to as "DISTRICT."

WITNESSETH:

WHEREAS, the DISTRICT and its residents are desirous of using the landfill facilities of the CITY for the disposal of solid waste; and

WHEREAS, the CITY is willing to allow the DISTRICT and its residents use of its landfill facilities during normal published operating times.

NOW THEREFORE, in consideration of the mutual covenants and agreements between the parties hereto, it is mutually agreed as follows:

1. **DEFINITIONS**

- a. Landfill – The term "Landfill" shall mean the Billings Regional Landfill situated in Yellowstone County, owned and operated by the City of Billings.
- b. Other Waste – The term "other waste" shall mean construction and demolition refuse, dead animals, non-processed tires, asbestos, and special waste such as contaminated soil, sludges, and treated timbers.
- c. Refuse – The term "refuse" shall mean all approved and permitted wastes that lawfully may be disposed of in the Landfill.
- d. Residential Municipal Solid Waste – The term "residential municipal solid waste" shall mean any refuse not falling under the definition of "Other Waste" and generated from or at a property used as a residential dwelling.

2. **TERM.** The term of this AGREEMENT shall be from July 1, 2019 through June 30, 2020. Either party may terminate this AGREEMENT at any time with or without cause, upon six months written notice to the other party. In the event of such termination, a pro rata payment shall be paid or refunded, depending on the termination date.

3. **USE OF FACILITIES.** The CITY will permit the DISTRICT and its residents to use its landfill facility for disposal of refuse generated within the area of the DISTRICT at such times as said landfill shall be open for disposal of refuse. The DISTRICT agrees to use facilities in accordance with all applicable federal and state legislation, all applicable local ordinances including, but not limited to Billings Municipal Code, Chapter 21, and all applicable federal, state, and local administrative rules in order to promote the health, safety, and welfare of the citizens of Billings, Montana.

4. **PAYMENT FOR RESIDENTIAL MUNICIPAL SOLID WASTE.** For the period from July 1, 2019 through June 30, 2020, the DISTRICT agrees to pay the CITY the sum of two hundred seventeen thousand six hundred fifty dollars (\$217,650.00) for residential municipal solid waste hauled by District residents from their primary residence. One half of this amount shall be paid semi-annually on or before July 1, 2019 and January 1, 2020.

DISTRICT residents will not be charged at the Landfill for residential municipal solid waste hauled by residential users for loads less than 1.5 yards or 700 pounds, but will be charged for other waste of any volume or weight.

5. **INDEMNITY.** Each of the parties hereto shall indemnify, hold harmless, and defend the other party, its agents, employees or officials, against any and all claims, demands, causes of action, damages, costs, expenses, liability, or judgments against the other party for personal injury, death, or property damage caused by the negligence of the other party, its agents, employees or contractors arising from, growing out of, or in any way connected with or incidental to performance of this agreement.



Indemnity under this agreement shall commence on the date of execution hereof and shall continue for the entire term this agreement is in effect and for any applicable period of limitations thereafter. Either party shall notify the other party, in writing, within ten (10) days of any claim made on the obligations indemnified against hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

By _____
WILLIAM A. COLE, MAYOR

DENIS PITMAN, Chairman

Donald W. Jones, Member

APPROVED AS TO FORM:

John Ostlund, Member

By _____
BRENT BROOKS, CITY Attorney



LANDFILL USE AGREEMENT

THIS AGREEMENT made and entered into this ____ day of June 2020, by and between the CITY OF BILLINGS, MONTANA, a municipal corporation, hereinafter referred to as "CITY" and the YELLOWSTONE COUNTY SOLID WASTE DISPOSAL DISTRICT, hereinafter referred to as "DISTRICT."

WITNESSETH:

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WHEREAS, the CITY is willing to allow the DISTRICT and its residents use of its landfill facilities during normal published operating times.

NOW THEREFORE, in consideration of the mutual covenants and agreements between the parties hereto, it is mutually agreed as follows:

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- c. Refuse – The term "refuse" shall mean all approved and permitted wastes that lawfully may be disposed of in the Landfill.
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2. TERM. The term of this AGREEMENT shall be from July 1, 2020 through June 30, 2021. Either party may terminate this AGREEMENT at any time with or without cause, upon six months written notice to the other party. In the event of such termination, a pro rata payment shall be paid or refunded, depending on the termination date.

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4. PAYMENT FOR RESIDENTIAL MUNICIPAL SOLID WASTE. For the period from July 1, 2020 through June 30, 2021, the DISTRICT agrees to pay the CITY the sum of two hundred fifty eight thousand dollars (\$258,000.00) for residential municipal solid waste hauled by District residents from their primary residence. One half of this amount shall be paid semi-annually on or before July 1, 2020 and January 1, 2021.

DISTRICT residents will not be charged at the Landfill for residential municipal solid waste hauled by residential users for loads less than 1.5 yards or 700 pounds, but will be charged for other waste of any volume or weight.

5. INDEMNITY. Each of the parties hereto shall indemnify, hold harmless, and defend the other party, its agents, employees or officials, against any and all claims, demands, causes of action, damages, costs, expenses, liability, or judgments against the other party for personal injury, death, or property damage caused by the negligence of the other party, its agents, employees or contractors arising from, growing out of, or in any way connected with or incidental to performance of this agreement.



Indemnity under this agreement shall commence on the date of execution hereof and shall continue for the entire term this agreement is in effect and for any applicable period of limitations thereafter. Either party shall notify the other party, in writing, within ten (10) days of any claim made on the obligations indemnified against hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

By _____
WILLIAM A. COLE, MAYOR

DENIS PITMAN, Chairman

JOHN OSTLUND, Member

APPROVED AS TO FORM:

DON JONES, Member

By _____
BRENT BROOKS, CITY Attorney

B.O.C.C Monday Discussion

1. b.

Meeting Date: 06/15/2020

Title: Contract with Billings Public Schools

Submitted By: Teri Reitz, Board Clerk

TOPIC:

Contract with Billings Public Schools for the GED Program at the Detention Facility

BACKGROUND:

The Billings Public Schools Adult and Community Education department provides support to the YCDF to help adult learners. The attached contract is a renewal of existing contracts with the District to continue to provide these opportunities.

RECOMMENDED ACTION:

Discuss.

Attachments

GED Contract

CONTRACT FOR SERVICES

07/01/20-06/30/21

This contract is between Yellowstone County Detention Facility (YCDF) and the Billings Adult Education Center of Billings Public Schools (BPS) and reflects the coordination of services for YCDF participants whose academic achievement requires prescriptive tutoring.

1. The Yellowstone County Detention Facility will:
 - a. Provide physical environment for classroom, i.e. classroom tables, chairs, desk, etc.
 - b. Provide request forms to inmates
 - c. Make referrals to education coordinator.
 - d. YCDF shall return materials to education coordinator for those inmates released and who may have had educational materials in their cells. If not returned, YCDF shall provide replacement.
2. The Adult Education Center will:
 - a. Provide necessary education services for students in the form of one full-time teacher, classroom computers, software, books, paper, pens pencils, etc.
 - b. Design program of study for each student
 - c. Escort students to and from classroom.
 - d. Provide enrollment list to YCDF as requested.
 - e. Provide on-site GED testing as scheduled twice per month with a minimum of four hours of testing per session.
 - f. Provide YCDF staff computer in-service as time permits and requested.
3. Student Protocol:
 - a. Incoming inmates informed of educational services available.
 - b. Inmate request form returned to education coordinator.

- c. Education coordinator consults with YCDF staff on appropriateness of inmate request.
- d. (Depending on class load) education coordinator makes inmate contact to discuss starting dates.
- e. Education coordinator enrolls and tests inmates.
- f. Education coordinator designs individual program based on test results and inmate needs.
- g. Education coordinator terminates inmates due to: lack of progress, failure to follow teacher instructions, or when there is a violation of classroom rules.
- h. Education coordinator provides enrollment forms, termination list, and an updated database to Adult Education Center and YCDF Administrator upon request.

Yellowstone County agrees to pay the Billings Adult Education Center four quarterly payments totaling \$62,037.00 during the contract period for the following service of a full-time teacher (187 days) according to the current BPS/BEA Negotiated Contract Provisions. Contract period shall be from July 1, 2020 through June 30, 2021.

IN WITNESS WHEREOF, the party sets their hands this _____ day of _____, 2020.

Billings Adult Education Center

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

JAY LEMELIN, DIRECTOR

DENIS PITMAN, CHAIRMAN

ATTEST:

JOHN OSTLUND, Member

JEFF MARTIN, Clerk and Recorder

DONALD W. JONES, Member

B.O.C.C Monday Discussion

1.

Meeting Date: 06/15/2020

Title:

Submitted By: Erica Wiley

TOPIC:

Commissioner Ostlund -

BACKGROUND:

n/a

RECOMMENDED ACTION:

n/a

B.O.C.C Monday Discussion

2.

Meeting Date: 06/15/2020

Title: Commissioner Boards Report

Submitted By: Erica Wiley

TOPIC:

Commissioner Boards Report

BACKGROUND:

n/a

RECOMMENDED ACTION:

Discuss
